

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

WP(C).No. 31101 of 2005(C)

AGAINST THE ORDER DATED 31/10/2005 IN IA.1820/05 IN
OS.253/2003 of MUNSIF COURT, PALA

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PETITIONER:

M.V.THOMAS, S/O.VARKEY,
MALANAKARAVATTU HOUSE, KURICHITHAM P.O.
MEENACHIL TALUK, KOTTAYAM DISTRICT.

BY ADV. SRI.SUNIL CYRIAC

RESPONDENT:

PIOUS JOSEPH, S/O.OUSEPH,
PALAKOMATTOM THOZHUTHUNKAL HOUSE,
KURICHITHANAM P.O. MEENACHIL TALUK,
KOTTAYAM DISTRICT.

BY ADV. SRI.MATHEW JOHN (K)
SRI.SUJESH MENON V.B.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 22/06/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX(WPC 31101/05)

PETITIONER'S EXTS.:

EXT.P1: PHOTOSTAT COPY OF THE PLAINT IN O.S.253/03 DATED 5.12.2005.

EXT.P2: TRUE COPY OF I.A.1820/05 ALONG WITH THE SUPPORTING AFFIDAVIT.

EXT.P3: TRUE COPY OF THE OBJECTION DATED 28.10.2005 FILED BY THE RESPONDENT.

EXT.P4: TRUE COPY OF THE ORDER DATED 31.10.2005 IN I.A.1820/05.

PIUS C. KURIAKOSE,J.

W.P.(C) No.31101 of 2005

Dated: 22nd June, 2007

JUDGMENT

Mr.Mathew John.K., learned counsel for the respondent is certainly right in submitting that the learned Munsiff had in his mind the proviso to Rule 17 of Order VI when he passed the impugned order by which he has dismissed an application for amendment to rectify what the petitioner describes as certain clerical error in the plaint. He is also right when he submits that the affidavit filed in support of the application Ext.P2 was quite inadequate and that even the petitioner does not say therein that in spite of due diligence he could not have applied for the amendment before commencement of trial. I must also say that the impugned order cannot be said to be vitiated to such an extent as to warrant correction in the supervisory jurisdiction of this court under Article 227 of the Constitution which is visitorial in nature.

2. However considering the totality of the circumstances which attend on the case, I am of the view that considerations of justice and the consideration that the real controversy between the parties must be allowed to be adjudicated on the basis of the legal evidence which comes on record (which can only be evidence founded on

pleadings), Ext.P4 can be set aside. However only on very stringent conditions. Accordingly, I set aside Ext.P4 on condition that the petitioner pays a total amount of Rs.6500/- by way of cost out of which Rs.5000/- shall be paid either directly to the respondent or through his counsel in this court and Rs.1500/- will be paid to the Kerala High Court Legal Services Committee by way of cash remittance. Payment and remittance as directed above shall be made within three weeks from today failing which the impugned order will stand confirmed and the Writ Petition will stand dismissed. If payments are made as above, Ext.P4 will become inoperative and the I.A. will stand allowed and the learned Munsiff under such an event will afford opportunity to the respondent to file additional written statement in the suit. If applications are made in that regard, the parties will be permitted to re-call their respective witnesses already examined.

The Writ Petition is disposed of as above. No costs.

srd

PIUS C.KURIAKOSE, JUDGE